

Judge Riley, cont.

founded the Legal Aid Centre of Eldoret, Kenya (LACE), which provides legal access to justice in the AMPATH medical center for its HIV/AIDS patients.

In 2011, Judge Riley traveled with the Washington, D.C.-based International Judicial Academy to The Hague, Netherlands, to observe the International Criminal Court and two International Criminal Tribunals that are hearing cases from Sierra Leone and the former Yugoslavia.

In 2012 she participated in the 3rd Sino-U.S. Law Conference at the National Judges College of the People's Republic of China, which oversees all aspects of that country's judicial training, placement and promotion.

In 2013, she lectured on judicial ethics at the Justice Academy of Turkey and in 2014 joined an Indiana University team of legal observers at the U.S. detention facility at Guantanamo Bay, Cuba.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006 and serves as presiding judge of the court's Fourth District.

Judge Robb, cont.

other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen's Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University to honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award; the 2007 Warren G. Harding High School, Warren, Ohio, Distinguished Alumni Award; the 2010 Indiana University Alumni Association President's Award, a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee's Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to benefit

the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

Judge Robb authored "Reflections of Baseball, Life and the Law" in the Indiana State Bar Association's journal, *Res Gestae* and "Running Bases, Winning Cases: Why the Grand Old Game of Baseball is like the legal profession" in the ABA's journal. She also authored a chapter on Supreme Court Justice Leonard Hackney in, *Indiana Supreme Court Justices*, and co-authored a chapter, "From Juvenile Courts to Family Courts," in *Essays on Indiana Legal History*.

In addition, she serves on the ABA Committee that accredits law schools and chaired the 2010 ABA's Appellate Judges Council-Appellate Judges Education Institute's national Summit for Judges, lawyers and Staff attorneys. Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a lieutenant commander on active duty in the United States Navy.

Judge Najam, cont.

comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired "Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts," attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate

of Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout.

Judge Najam and his wife live in Bloomington.

Justice, quoted

Whatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.

- Justice Oliver Wendell Holmes, Jr.

The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

- Justice Felix Frankfurter

Law matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.

- Justice Elena Kagan

Restriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.

- Justice Thurgood Marshall

The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases. It's the law. The judge applies the law to the facts before that judge.

- Justice Sonia Sotomayor

Court of Appeals Mission Statement

To Serve All People by Providing
Equal Justice Under Law



SYNOPSIS

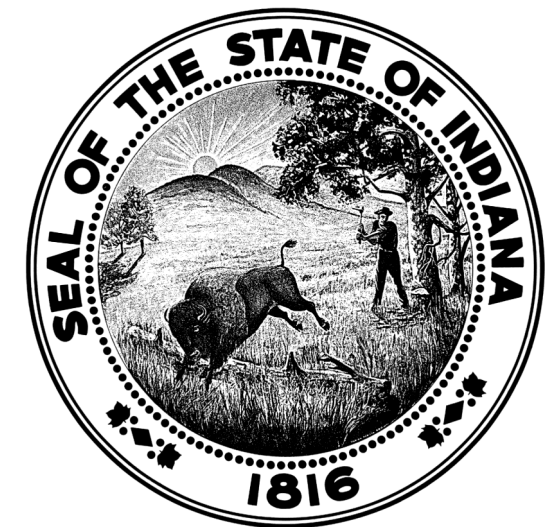
In October of 2009, Randy Faulkner & Associates, Inc. ("RFA") agreed to lease real property in Greenwood to the Restoration Church, Inc. ("the Church"), and prior to the execution of the lease agreement several members of the Church and the Church itself invested about \$450,000 to restore the property. Although RFA believed the monthly fair market rental value of the restored property to be about \$14,000, RFA agreed to rent the property to the Church for one year at \$100 per month. The lease agreement provided the Church with six one-year options to renew, but it is not disputed that the Church did not give the notice required to exercise its option to renew the lease.

In late July of 2012, RFA gave the Church written notice to vacate the premises within thirty days. After vacating the premises, the Church filed suit against RFA and Faulkner for breach of contract. RFA and Faulkner countersued for breach of contract, tortious interference with a business relationship, and various theories of defamation. After a bench trial, the court found that RFA had breached its contract with the Church, relying on waiver and estoppel. The court then ordered RFA to pay the Church about \$322,000 in damages, which the court calculated in part by using the Church's actual monthly rent payments, a pro-rated amount of the Church's and its members' initial restoration costs, and the Church's remaining option terms. The court also found for Faulkner on his intentional tort claims but concluded that Faulkner had not met his burden of proof to show damages on those claims. This appeal and cross-appeal ensued.

Court of Appeals of Indiana

*Hearing oral argument at
French Lick*

Thursday, June 2, 2016 @ 2 p.m.



Faulkner & Associations

v.

Restoration Church

41A01-1506-PL-00706

*On Appeal from Johnson Superior Court 1
The Honorable Kevin Barton, Judge*

Indiana Bicentennial 1816-2016

Attorneys for the Parties For the Appellant

Seth M. Thomas serves as a partner in Ice Miller's Environmental Group. He primarily practices commercial litigation, environmental litigation, and insurance coverage litigation.

Seth focuses his practice on environmental litigation and insurance coverage litigation. He has litigated several cases for both public and private clients involving complex issues regarding environmental cleanups. He has also litigated several insurance coverage cases. In addition, his litigation experience includes class action, contract, constitutional violations under Sec. 1983, RICO and various tort cases. Seth has also participated in litigating appeals arising from commercial litigation.

He received his Bachelor of Science, with highest distinction, in business administration with a concentration in finance and a minor in economics from Indiana University's Kelley School of Business at Indianapolis in 2001. He earned his juris doctorate, summa cum laude, from the Indiana University School of Law Indianapolis in 2005 where he was editor-in-chief of Volume 38 of the Indiana Law Review and a member of the Moot Court's Order of the Barristers. He also tutored civil procedure for the Dean's Tutorial Society.

Prior to joining Ice Miller, Seth worked for Judge Kenneth H. Johnson as a bailiff and court reporter in Marion Superior Court, Civil Division Room 2. While in law school, he interned for United States Magistrate Judge Tim A. Baker in the Southern District of Indiana. In 2006, he clerked for the Chief Judge of the Southern District of Indiana, Judge Larry McKinney.

Seth is admitted to practice law in the state of Indiana and the United States District Court for the Northern and Southern Districts of Indiana.

For the Appellee

Jeffrey Rocker was born on February 4, 1970 in Mount Clemens, Michigan and raised in Richmond, Michigan, the son of a residential developer. After completing a bachelor's degree in Psychology, he continued on to law school at Valparaiso University School of Law. As a young man, Jeff worked in residential construction and real estate development. During his time in law school, Jeff had the opportunity to work as a judicial clerk in Michigan where he was responsible for drafting a

range of cases. After completing his legal education, Jeff moved to Columbus, Indiana where he met and later married Kimberly L. Lukins-Rocker. In 2004, they were blessed with the birth of their son, Gavin James Rocker. In May of 2007, Darby Claire Rocker was born to the couple.

Since being admitted to the bar, Jeff has been involved in the American Bar Association, the Indiana State Bar Association (member, the Technology Committee, 2004-present), Law Firm Management Committee (2007), and the Bartholomew County Bar Association (Secretary, 1996-1997; Secretary 2010). He has also been involved in a number of community activities including the American Lung Association (Chair of Fundraising, 1996-1997); the Bartholomew County Historical Society (President, 2000-2004); the Bartholomew County Humane Society (Board Member, 2005-2008); and, Bartholomew County School Foundation (2009-Present). Jeff also held a position on the Home Federal Bank Trust Advisory Board (now Old National Bank). In September of 2004, Jeff was the subject of an article in the *ABA Journal on Staffing and Productivity*. He has been quoted in *Lawyer's Weekly* on topics ranging from technology to practical issues facing practicing attorneys. To further assist local businesses, from 1999-2001 Jeff was a contributor to a local business newspaper *The Columbus Business Scene* where he wrote articles on a wide range of issues facing local businesses.

From 1998 to 2007, Jeff served as an adjunct professor at Indiana University-Purdue University, Columbus (IUPUC) in a number of areas including the Business School, the School of Education and the School of Public and Environmental Affairs. Jeff had the privilege of teaching the first cohort of students to attend the newly formed Masters of Business Administration program at IUPUC.

A short history of the Court

The Court of Appeals of Indiana is the state's second-highest Court. It hears appeals from Indiana trial courts and from some state administrative agencies.

The Court's 15 members hear cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned. The Court celebrated its centennial in 2001.

While Indiana's 1816 Constitution created the Supreme Court, the Legislature created the Appellate Court of Indiana in 1891 as a temporary court to relieve the Supreme Court's grow-

ing caseload. It became a permanent Court in 1901 and a Constitutional Court in 1972, after voters ratified a constitutional amendment.

Including judges serving senior terms, 127 judges have served the Court since its inception.

What happens after a Court of Appeals oral argument

After oral argument, the judges confer to decide the outcome. One, called the writing judge, drafts an opinion for the others' review. Final language may involve several drafts and significant collaboration among the judges.

Generally, opinions will affirm or reverse lower court rulings in whole. But some affirm in part, some reverse in part, and some do both. Not infrequently, the opinion instructs the trial court about the next appropriate course of action.

Many opinions are unanimous, although non-unanimous decisions (2-1) are not uncommon. Dissenting judges usually express their views in a separate opinion that becomes part of the permanent record of the case.

Judges sometimes write separate, concurring opinions that emphasize different points of law or facts than the main opinion.

No rules or laws govern how fast the Court of Appeals must issue an opinion. But the court strives to decide cases within four months of receiving all briefs, transcripts and other records.

Once issued, all opinions are published on www.courts.in.gov and maintained in the permanent records of the Clerk of Appellate Courts.

Parties can appeal decisions of the Court of Appeals to the Indiana Supreme Court by filing a petition to transfer within a prescribed number of days. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.

If the petition is denied, the Appeals Court decision stands.

Why Appeals on Wheels?

Appeals on Wheels shines a light on the real-world legal issues that Appeals Court judges must decide.

Audiences also get to observe skilled legal arguments and advocacy by some of Indiana's best lawyers, against a backdrop of case-specific facts and statutory and constitutional law. Today's argument is the Court's 20th Appeals on Wheels event this year.



The Honorable
Edward W. Najam, Jr.

Monroe County

Edward W. Najam Jr., was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court's First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, With Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first

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Today's Panel of Judges



The Honorable
Patricia A. Riley

Jasper County

Patricia A. Riley was named to the Court of Appeals of Indiana by Governor Evan Bayh in January of 1994. A native of Rensselaer, IN, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley's civic associations include being on the Board of Directors of the Greater Indianapolis Health Foundation, Board of Directors of Global Peace Initiatives, Board of Directors and Treasurer of the Indiana University School of Law-Indianapolis Alumni Association, and a member of the Indianapolis Rotary Club.

She also has extensive international legal experience. In 2008, she co-

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The Honorable
Margret G. Robb

Tippecanoe County

Margret G. Robb was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O'Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as chief judge; the first woman to hold that position in the Court's more than 100 year history.

Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender.

She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association.

She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute.

She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association's Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the Indiana State Bar Foundation and a Senior Distinguished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys,

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